Reservations

A Socio-Legal Perspective

K Balagopal

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New Delhi

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Reservations: A Socio-Legal Perspective

The Constitutionally mandated issue of Reservation for the so-called backward and scheduled castes, in all its complexity continues to be riddled with conflicts, confrontations and controversies in practically all spheres of collective life here. This clearly indicates that the issue along with several other similar issues of empowerment of the weaker sections, despite being enshrined in and mandated by the Law of the Land, is neither expressive of, nor based on nor backed by national consensus but was brought in to meet other exigencies. An important but disastrous result of such 'mere-legal' inclusion being, that the different dimensions of the issue are interpreted (and also implemented) not in the spirit of the Constitution, or in sympathy with the mass of the excluded but variously in the interests of the different influential lobbies of the entrenched social groups, leading to the virtual negation of all intended benefits to the disempowered. Understandably the debates and controversies surrounding the issue tend to gravitate towards the 'quasi-sacred' but also the least democratized sphere of the Indian nation-state, the judiciary. Once the judiciary speaks, it is consensus, that the issue is not only legally settled but socially legitimized but also academically reproduced. It is in this context that the present text gains enormous significance. The pieces of writing of late K Balagopal included here are indeed a rare specimen of its kind, in this that they do not hesitate to take head on, scrutinize, challenge and even debunk the judiciary and its pronouncements in their own terms, from the unassailable point of view of the empowerment of the suppressed in society. Taken together the five pieces are a fine example of socio-legal investigation on a crucial contemporary issue; they are a forceful reminder that the judiciary – law, courts, judges and adjudications – is very much embedded within the larger society like any other institution and its dynamics is not beyond or above the ideological and material contradictions within society. The writings are clear evidence not only to the author's legal acumen and passionate commitment to the cause of the downtrodden but also his wide knowledge of history, culture and traditions of the country. The subtle irony that runs through the text does not fail to remind the reader of the unassuming and considerate but at the same time deep-thinking and committed person that Balagopal ever was for all who knew him. This is a small tribute to a great man. -Editor

1. Anti-Reservation, Yet Once More

SOUNDS of the future are sending their echoes backwards. As one reads the posters and listens to the arguments one is filled with an indistinct sense of unease, a premonition of the scenes that are going to trample along the streets of this land twenty, thirty or forty years hence; a prescience that is more akin to a feeling of *deja vu* in reversed time.

On the face of it there is nothing alarming about the picture; it is perhaps even slightly amusing. There are these hundreds of youths, boys and girls, well-fed and well-dressed, marching along the streets posters in hand and slogans on their lips. They are obviously more accustomed to picnicking than to agitating, for they are agitating as if on a picnic. Their slogans too do not belong to the world of Indian mass politics. They are, needless to say, mostly in English; and they have none of the sonorous resonance we are all accustomed to; instead they have the crisp brevity of stickers and ads.

The aplomb with which the agitation is being conducted is astonishing in itself. Not one agitation since NT Rama Rao came to power has been tolerated so benignly; and never have the Andhra police smiled so much at agitators. Their hands must surely be itching to have a go at the agitators, for it must be said to their credit that they have always exhibited commendable impartiality in thrashing trouble-makers of any sort. But NTR has warned them in a well-publicised statement that "however much the anti-reservationists provoke the police, the police must not get provoked." Democratic rights are having their innings in Andhra. The agitators deflate the tyres of buses and police jeeps; they take out endless processions in Hyderabad, where prohibitory orders have been continuously in force for the last 17 years; one day they have a programme of travelling ticketless in buses all over the state, the next day they have a bandh, the third day a *rasta roko*, and so on. They are trying out all the agitational forms we have heard about and some more besides. If anyone wants to know what the future stateless society imagined by the communists will look like and how freely the people can exercise their democratic rights in such a society, he can walk into Hyderabad and watch it in action.

But since we are not living in a stateless society, there is something suspicious about this; and the suspicion gets strengthened when one observes that during the same period, a procession of fishermen

protesting against the government's policy of contracting out fishing rights in irrigation tanks to wealthy contractors was mercilessly lathi-charged. This, of course, is not to mention what is happening in rural Telengana in the name of suppressing the Naxalite movement.

Muralidhar Rao Commissions

It all started with NT Rama Rao's decision to pull out of the Secretariat's cupboards the report of the Muralidhar Rao Commission on reservations to backward classes (BCs). The Commission had been appointed in January 1982 and had submitted its report in August that year. Nobody appears to have bothered much about the report all these years until NTR pulled it out recently with an eye to the ensuing elections to the Panchayat Mandals; and Muralidhar Rao himself passed away in the meanwhile with some question marks attached to his integrity.

The report, apart from being rather shoddy, is a very peculiar document. From the terms of reference it appears that the intention of the Congress government in constituting the Commission was either to comply with the letter of the recommendations of the Anantharaman Commission of 1970, which had recommended that the classification and quantum of reservations to the BCs should be reviewed after 10 years; or, worse, to actually identify at least a few backward castes which had 'progressed' using reservations during the last decade and delete them from the list of beneficiaries. What Muralidhar Rao (who himself belonged to a backward caste) did was to ignore the terms of reference and set out to do all he could to help the backward castes, a decision that is difficult to find fault with, all things considered. He therefore refused to delete any of the backward castes from the existing list (with the exception of one section of the Kalingas of Srikakulam), but added nine more to the list instead. Since it would be a miracle if any backward caste had succeeded in pulling itself up to level with the Reddys, Brahmins and Kammas in a matter of ten years, it is difficult to find fault with this reluctance either.

What really got the goat of the forward castes however was that he recommended that the quantum of reservations for the BCs should be increased from 25 to 44 per cent. He supported this by a simple piece of arithmetic. The scheduled castes, scheduled tribes and minorities together constitute about 30 per cent of Andhra's population. The remaining 70 per cent is to be shared out between the BCs and the forward castes.

Since no caste-based census has been taken after 1931, Muralidhar Rao chose to go by the estimate of the Mandal Commission, which had taken the forward castes to represent 17.58 per cent of the population.

Muralidhar Rao, who apparently did not care for decimals, rounded this off to 18 per cent, and deduced that the BCs therefore constitute 52 per cent of the state's population. He further estimated that about 8 per cent of the BCs manage to compete on their own steam with the forward castes. How he arrives at this estimate is rather obscure, for he has obviously not gone in for any kind of statistical exercise, and indeed total unconcern for any systematic procedure in arriving at numerical estimates is the hallmark of his effort; but it is indicative of the scruples he suffered from that he thought of estimating this figure at all. He then deducted this 8 per cent from 52 and arrived at the recommendation of 44 per cent reservation for the BCs. He must have breathed his last at peace with himself.

It is this arithmetic that infuriated the forward castes. Their argument is that Muralidhar Rao on the one hand accepts the Mandal Commission's estimate of the proportion of forward castes in the population, but on the other hand will have nothing to do with that Commission's criterion for backwardness; instead he jealously keeps out of the list of BCs some of the presently forward caste communities which might possibly become backward by the Mandal Commission's criterion. It is this suspension in the paradise of *trisanku*, where they have neither the benefit of being reckoned backward nor the numerical advantage of being enumerated forward, that really enraged them. They have therefore been digging up the censuses of 1921 and 1931 and taking a head count of their ancestors to prove how numerous they were and therefore are. Understandably a lot of cooking up of statistics is going on in the process. Numerical accuracy is too fragile a thing to stand up to the exigencies of social conflicts. The forward castes have come up with the estimate that they constituted 33 per cent - and not 17.58 as Mandal would have it-in the year 1921, and therefore that the BCs also constituted another 33 to 35 per cent of the population and not 52. They achieved this miracle by counting the entire heterogeneous Kapu caste complex as forward castes, though half of those castes are backward according to the 1970 list. The truth is that notwithstanding the evident discrepancy between the Mandal

Commission's well-defined criteria for identifying backward castes and Muralidhar Rao's lack of any criterion at all, it turns out that the population estimates of Muralidhar Rao are reasonably accurate, entirely by accident and in spite of himself. A careful computation of the 1921 census shows that the Hindu BCs (as classified in 1970) constituted about 42 per cent of the population then. To arrive at the current proportion, one should do three things: add the population of the de-notified tribes as well as backward class Muslims and converted Christians; add the population of the nine new castes recommended for inclusion in the list of BCs by Muralidhar Rao; and take account of the likelihood that the population of the BCs has had a relative acceleration of its growth rate, since it is generally known that the poor have had a higher growth rate of population than the rich in recent decades. Taking all these into consideration, there is no doubt about the BCs being more than 50 per cent of the state's population at present.

The Agitation

Whatever the facts, it is two months since the forward castes took to the streets. Officially all the political parties defend reservations, but on the sly it is the leaders of their student and youth wings that are leading the agitation. This is particularly true of the BJP, whose student followers in the Akhil Bharatiya Vidyarthi Parishad (ABVP) constitute the bulk of the anti-reservation agitators, especially in the Telengana districts. The agitators have formed an organisation called the AP Nava Sangharshana Samiti (APNSS), as well as a Parents' Association. If all this appears to have some resemblance to the Gujarat anti-reservation agitation, that is obviously no accident.

Every reactionary social movement creates a myth that truly symbolises it, justifies it in its own eyes and in the eyes of the prevalent normative presumptions. The myth generated by the anti-reservationists of Andhra centres around a patriotic concern for 'merit.' The brunt of their ideological attack is that reservations destroy 'merit.' *The ontological status of this thing called 'merit' is almost that of a physical substance that resides in different people in different quantities. It is the latent Brahminism of our culture asserting itself.* This 'merit' is measured accurately by the percentage of marks a student gets in his examinations; due recognition to 'merit' is necessary if the nation is to progress; and conversely, everybody who has this 'merit' is an asset to the nation. There is no

need to labour the absurdity of these notions but they seem to be serving the purpose of legitimising the agitation in the eyes of those persons who would otherwise be unwilling to openly oppose reservations, whatever they may think of them at heart.

It is interesting that the anti-reservationists have chosen this myth in preference to certain more populist myths that they could have adopted: like for instance the large body of lower middle class among the forward castes, who could also do with a helping hand from the state. In the beginning it was argued for a while that reservations to backward classes are depriving the poor among the forward castes of their educational and employment opportunities, an argument that sounded reasonable enough to attract many people. It so happened that at this time an unemployed Reddy youth committed suicide in Hyderabad. The Press put the news quite deliberately on the front page, and the anti-reservationists made much of it, implying that he had been killed by the policy of reservations in jobs to BCs. But the focus of their arguments has primarily been on 'merit,' how it is destroyed by reservations, and the harm done to the nation thereby. Emphasis on such a non-populist and elitist myth is probably due to the preponderance of the RSS outlook among the agitators, an outlook that is known to dislike socialism so much that it will not even be populist.

And corresponding to the myth they have chosen, their campaign, though physically at a low key, is quite vicious in the arguments and notions it is spreading. All of a sudden the forward castes have collectively become meritorious and the rest of the people incompetents. It is Manu and Baudhayana resurrecting themselves with a vengeance, the oddity being that the identity of the agents of the resurrection, most of whom those worthies would have recognised as Sudras, would scandalise them. The image of the backward castes deliberately set up and propagated by the agitationists is that of worthless incompetents sneaking up from behind and depriving brilliant and deserving youth of college seats and jobs, and destroying the nation's prospects of achieving greatness. Some of the slogans printed on the posters they are carrying are quite offensive. In medical colleges they have put up pictures depicting a backward caste medical graduate removing a tooth instead of an eye; those who get seats and jobs on reservation make unreliable engineers and inefficient bureaucrats; and

so on. And by way of relief, some of the slogans are amusing. One frequently printed slogan carries the plaint: 'Is it a sin to be born in a forward caste?' The ironical justice of the question will strike anyone with a sense of history.

In spite of this viciousness latent in their campaign, they are having a field day. The state is uncommonly benign, and the Press is terribly friendly. Everything the agitationists do is described as 'imaginative,' 'innovative,' 'interesting,' etc. Every day for the last two months every newspaper has been carrying front-paged photographs of the anti-reservationists doing all kinds of mundane things: taking out processions; sticking posters, deflating the tyres of police jeeps, polishing shoes and sweeping roads (which are among the novel agitational methods invented by them), and so on. Their meetings and Press conferences are reported in a most tendentious fashion. It is rarely that so much appreciative commentary is added to routine reporting in the daily Press.

The Reactions

Two kinds of reactions are of interest, one that of the BCs and the other that of the Left. To put it simply, the BCs are ineffective and the Left is groping around. The reasons are perhaps to be sought in a proper understanding of what these anti-reservation agitations really signify. *Reactionary social movements rarely mean what they say, nor signify what they pretend to.* A failing of the Left has always been that it discusses issues within the terms and parameters set by the opposition, instead of dissecting the terms of the discussion themselves. So long as the discussion of the 'reservations question' keeps turning around unemployment among the lower middle class forward castes, the alleged monopolisation of the benefits of reservations by upper class BCs, or the question of 'merit,' we may at best succeed in debunking a couple of myths, or salvaging our consciences by inviting all the poor irrespective of caste and creed to unite. But we will never understand why the anti-reservation movements are picking up just now, why they are being sponsored and led by propertied people who have no real need of a government job, why the lower middle class forward caste youth running behind the anti-reservationists are unable to realise that getting rid of reservations will not solve their problem of unemployment because it will not create more jobs, why (as some

progressives bemoan in frustration) nobody is able to realise that socialism is the only solution to the problem, neither reservations nor 'open' competition. Take for instance the active participation of girl students in the agitation, certainly a rather unusual phenomenon. A bemused newspaper man who sits at his desk receiving Press notes is struck by the fact that most of the running around for the anti-reservationists is being done by the girl students; these girls, he says, will not be able to pursue careers anyway, whatever be their aspirations. Many of them will not even get as far as applying for jobs; and it is difficult to believe that they are worried about the jobs-to-be of their husbands-to-be; human beings are rational but not all that much. For the girls, especially these middle class forward caste girls, dowry and the macabre phenomenon called 'dowry deaths' are much more immediate problems that one would, by common notions of human rationality, expect to engage their attention more than reservations. And yet, he says, he has never seen them one-tenth as active in an anti-dowry campaign.

Another thing that has equally surprised observers is the inability of the BCs to unite and defend their rights. Muralidhar Rao estimated their number as 52 per cent of the population. Even the most rabid upper caste estimate puts their number higher than that of the upper castes. And yet, even as the APNSS of the upper castes is having a field day with its agitation, the counter-organisation floated by the BCs, the AP Sama Sangram Parishad (APSSP) has not only not created a notable impression, but it soon split into two and it is to be seen whether the two put together will be any more effective than the original one. Unless one is to interpret this too as lack of 'merit' on the part of the BCs, one must discover the reason for this oddity.

The reasons appear to lie in (a) the nature of the caste system (its real nature, not the meaningless Brahmin-Kshatriya-Vaisya-Sudra classification of the Dharmasastras, and (b) the pressures generated by contemporary political economy. A large part of the history of India can be told in terms of the transformation of endogamous groups or communities (loosely called tribes) into castes. The caste continues to be endogamous, but the difference is that whereas the original community was an autonomous entity as a unit of production (including primitive direct appropriation of the fruits of nature), with at most

relations of exchange with surrounding society, the caste has a well-defined position within a larger unit of production. Each caste has an economic role for itself, though it is not immediately that each economic activity is served exclusively by just one caste. Since tribal communities are localised in their spread, it follows that it is most natural for castes to be localised and confined to small regions. This is a phenomenon that is easily observable with the backward castes: of the 100 and odd backward castes identified in AP, a very large number are confined to just one or two districts, or at most an eco-historical region of the state.

But two things happen at the point of and subsequent to the transformation. One is that the tribal community frequently splits into two, indicating a class division. A large number of castes, for instance, exist in pairs, one backward, and one forward, with the difference being indicated by a prefix. For instance there are two kinds of Balijas, two kinds of Kalingas and two kinds of Velamas, etc. The upper sections take to trade/cultivation, and the lower sections remain food gatherers or become labourers. The next thing that happens is that from within the upper sections of different communities spread across a large area, a class consolidation takes place, based primarily on substantial landholding or substantial trade. The rich among the various localised communities-turned-castes consolidate across the board as a fresh grouping. But the original characteristic of endogamy is carried forward and reproduced in what is essentially a class formation and so what should have become a class of substantial landholders becomes one more caste. This appears to be the genesis of all the dominant landed castes: the Reddys and Kammas of Andhra for instance. There is no other way one can account for the wide spread of these castes across the state, in contrast to the localisation of the BC cultivating castes, unless one believes that the good Lord in his wisdom created the castes according to *guna* and *karma* as He says in the *Bhagavadgita*.

Sometimes a secondary consolidation is attempted at a lower level, with the remaining middle level cultivating castes 'trying' to come together as another extensive caste; but in Andhra at any rate this secondary consolidation has remained incomplete. The Munnurkapus, Balijas, Telagas, Tenugus and Mutrasis are collectively referred to as Kapus but the consolidation has remained un-consummated and the term Kapu as often refers to the profession of cultivation as to a caste or a caste complex

(I believe the term Jat has the same status in parts of the North.) In contrast, the consolidation has been quite successful in the case of the upper cultivating castes; with the Kammas almost entirely so, but with the much more heterogeneous Reddys to a lesser extent: the Reddys of Rayalaseema do not intermarry much with those of Telengana (though there is no prohibition), and the Reddys of Nellore district are generally regarded as a sociological species all by themselves.

This historical reality lies behind the ability of the forward castes to attack reservations much more vigorously than the BCs are able to defend them. The difference is not merely in relative economic strength. The scheduled castes are on the whole much poorer than the BCs, but 'untouchability' and the predominant occupation of agricultural labour have given them an identity cutting across the regions which has enabled them in times of need to come together more effectively (as the aftermath of the Karamchedu killings of last July demonstrated), than the BCs have been able to do now. The localisation of the cultivating BCs in contrast to the wide spread of the land-holding upper castes, by the very nature of their historical formation, is the reason why agitations against reservations to BCs - whether in Gujarat or in Andhra - have not met with effective resistance from the beneficiaries. This, needless to say, is only a disability and not a determinate impossibility.

It is against this backdrop of uneven caste formation that we have had a certain amount of economic development in the post-Independence period. There has been some technological modernisation in agriculture and allied activities, and an attendant growth in trade, business and finance. A new rich class has grown around this development, a class based on land-holding and trade. The basis of its enrichment is certainly the possession of property, but the rich among the landholding upper castes have made full use of not only their substantial landholdings but also the wide spread of the upper castes as a whole to appropriate the fruits of this development, especially to entrench themselves in the political superstructure which has grown over this process of development and which directs it. The caste connection has played a major role in apportioning the fruits of development in favour of the rich among the upper castes.

It is their children, along with the children of Brahmin bureaucrats

and professionals, who are leading the anti-reservation agitation today. It is not an accident that the richest among them congregate in the professional colleges - Medicine and Engineering - and it is here that the anti-reservation agitation has taken its most offensive and vicious form. Just as their fathers used the extensive presence of their castes to dominate the provincial economy and political power structure, they are today using the same extensive spread of their castes to build a strong agitation against reservations to BCs. The relatively localised BCs, which never had the capacity to consolidate over a large area so that even the rich among them could never assert themselves in the economy and polity on par with the rich forward castes, are equally and for the same reason handicapped in countering the agitation.

The arrogant self-assertion of the new rich provincial propertied classes is a notable phenomenon of recent years, and its footprints can be discerned in various spheres of social life and struggle. Anti-reservation agitations are one such sphere. In this essential sense there is little difference between anti-reservation agitations and 'atrocities on harijans' as violent attacks on the rural poor are described by our Press. In rising to dominance and riches this new rich class used its extensive caste links to rope in its lower middle class caste-fellows as camp followers and voters to help it pull itself up, and now it is using the same lower middle class caste-fellows as foot soldiers in fighting the special privileges acquired by the BCs by dint of prolonged struggles. The fascist possibilities inherent in a wide-spread and rapidly-consolidating class of new rich are familiar to history; and when the class is provided with an army of potential foot soldiers - whether they are only 17.58 per cent of the population or more - as a consequence of the unique history of this country, the danger becomes more serious. The Left would do well to recognise that this is where the essence of the matter lies, neither in the obviously spurious question of salvaging 'merit,' nor in the seemingly more rational question of unemployment and consequent frustration among youth. Reality is the last thing that should be taken at face value. Its rationality is Hegelian, not positivist. It becomes the duty of the Left to convince the lower middle classes among the forward castes, whose frustrations are as real as those of other poor people, to save themselves from becoming foot soldiers of fascism; if the Left confines itself to cliches like 'reservations will not

solve the problem of unemployment,' 'it is not caste but class that is decisive,' it will be fiddling trite tunes while the mohallas burn.

2. Reservations: The Court Says No

IN a judgment delivered on September 5 a full bench of the AP High Court held that the State Government's GO enhancing the Backward Classes' (BC) quota of reservations in jobs and college seats from 25 to 44 per cent was unconstitutional; the judgment rang down the curtain on a nearly two-month long turmoil that had thrown everything out of gear in the state. The entire 'public opinion' of the state heaved a rather shameless sigh of relief, and in case that was not audible enough, all the newspapers without exception wrote editorials stating in black and white that the state government had better not go to the Supreme Court in appeal against the judgment. It was plainly their unanimous wish that the whole thing be forgotten as a bad dream. But NTR was in no need of such advice. He hastened to thank the High Court for holding the GO only unconstitutional and not mala fide in its intentions as had been alleged, inter alia, by the petitioners; deduced the happy corollary that his government would not have to resign (for mere unconstitutionality of its acts, if such it is, is no ground for resignation of a government); and promised the increasingly strident anti-reservationists that he would not appeal to the Supreme Court but would abide silently by the High Court's judgment. He invited them for talks immediately after the judgment was delivered, and it was only after he promised with an uncharacteristic humility to behave himself that the anti-reservationists called off their agitation and walked out in jubilation into the streets littered with the broken glass panes of the buses stoned by them during the last six weeks.

A purely legal analysis of the judgment can be left to pundits. How exactly a reservation quota of 25 per cent is not discriminatory, not violative of Articles 15 and 16, but a quota of 44 per cent becomes unconstitutional is not very clear. There is no quantitative restriction in 15(4) and 16(4) which allow special privileges to be given to backward classes, and there is no justification for arbitrarily and irrationally reading such a restriction into those exceptional clauses. How a total reservation of 50 per cent for all categories of beneficiaries put together is constitutional but anything more is not a piece of wisdom that was advanced hesitantly ('speaking generally') by the Supreme

Court in 1963, and that everybody has been quoting for the last 23 years is also not very clear. More to the point, *it is not apparent on the face of it that the courts are right in arrogating to themselves the authority to decide not only upon the constitutionality of the principle of protective discrimination but also how much protection is constitutional and how much is not.* Nor that, there is any rationality to the barrier at 50 per cent for total reservations.

Why 50? Why not 49 or 51 or 70 for that matter? Let us recall here that illiteracy is 65 per cent, rural poverty 70 per cent and malnutrition nobody knows what per cent in this benighted land. Muralidhar Rao, the Chairman of the one-man commission on Backward Classes, whose report led to the present fracas adopted the method of estimating the proportion of BCs in the state's population, and deducting from this figure the proportion which he felt was in a position to compete on par with the forward castes, he recommended the remainder as the appropriate quota of reservations for the BCs. This procedure - however shoddy Muralidhar Rao's calculations may have been - is rational and logical, in contrast to the prescription that total reservations should not exceed 50 per cent, which is entirely arbitrary and has no rational basis whatsoever. In any case, *it is obviously a matter for the legislature to prescribe any such restrictions and not for the Courts.*

Anti-Reservationists Offensive

Leaving these considerations to experts to wrangle over, it is worth taking a bird's-eye view of the events preceding and succeeding the judgment. Forward caste students formed the AP Nava Sangharshana Samiti (APNSS) almost immediately after the GO was issued. They began their campaign with a lot of circumspection, an unconscious tribute perhaps to the long though chequered history of the left in this state. They made it very clear in the beginning that they were not opposed to reservations as such but only to the hike in the BCs quota from 25 to 44 per cent; that their concern was with unemployment among forward caste educated youth; that the whole policy of reservations was an eye-wash that did not benefit the really poor among the BCs; and so on. The Press, in a rare exhibition of sensitivity, made it a point to describe their agitation by the unwieldy title 'anti-reservation hike' or 'anti-excess reservation' movement rather than 'anti-reservation' movement. Reports in the Press would invariably start with the lead: 'the students who are agitating against the hike in reservations;' not for one second would

they allow the reader to forget that it was the 'hike' that was being opposed and not reservations as such.

The anti-reservationists went to the High Court contending that the GO was violative of Articles 15 and 16 of the Constitution, and got an interim order suspending the operation of the GO. Strengthened by this victory they stepped up their offensive. Indeed, throughout this period, the more battles they won the more aggressive they became, much to NTR's discomfiture. They quickly stopped making any distinction between reservations as such and hike in reservations. From unemployment the argument shifted to 'merit.' It was argued incessantly that reservations were preventing meritorious students from getting college seats and jobs, and that thereby the nation was losing precious talent. They also turned somewhat violent, stoning buses, breaking glass panes and so on. It was interesting to see, in a single day's paper, a news item on one page reporting violence by the anti-reservationists and on another page a ponderous editorial congratulating them for using non-violent methods and maintaining decorum. The Press needed to invent the myth of a 'responsible and non-violent' movement to cover up for its own blatantly partisan attitude and therefore it turned a blind eye to the sizeable violence - especially destruction of public property - indulged in by the anti-reservationists. Normally the moment a contentious issue goes to Court, the Press advises the agitationists to give up their agitation and return to normal life, and 'let the law take its course.' Vague threats of the matter being *sub judice* are also uttered. But with the anti-reservation movement the Press was for once neither reporting nor just commenting, it had joined the battle; *it realised perfectly well the powerful influence that a strong agitation out on the streets can have on proceedings inside a Court hall.* And so we saw the remarkable phenomenon of the Press blandly reporting the agitation of the anti-reservationists and Court proceedings in the case on the same page, day after day. Yet, when some Backward Caste youth demonstrated outside the houses of the judges after the judgment was delivered, that was universally condemned as contempt of the Court and the judiciary.

Some incidents that happened in Hyderabad on September 3 illustrate well how much pressure was concertedly built up by the anti-reservationist students, like-minded (meaning forward caste)

government employees and the Press, to coerce the government and perhaps intimidate the Court which had completed hearing the arguments and was to deliver the judgment in a couple of days. On that day the anti-reservationists decided to picket the state secretariat. It is rumoured that they chose children of the secretariat employees and officials to participate in the programme, and that they left home that morning saying 'Mummy, we are going to picket your office today.' It must be ages since anybody was last allowed to picket or even demonstrate anywhere near the vicinity of the state Secretariat in Hyderabad. But APNSS was not only allowed to do so, the police obligingly barricaded the street on both sides of the secretariat, stopping all traffic, and allowed the picketeers a field day. They not only picketed the secretariat, they staged impromptu plays, sang songs and danced on a normally very busy road now emptied for their convenience at the behest of an administration that they were supposedly fighting against. This went on for two full hours, in spite of the fact that the policing arrangements were under the supervision of the Deputy Commissioner of Police (DCP) west zone, KS Vyas, a notoriously trigger-happy police officer, as SP, Nalgonda, it was he who had revived /encounter killings in 1981, and later as SP of Vijayawada urban district he created such a situation that the local Congress (I) leaders, of all people, were driven to stage dharnas for civil liberties. But on September 3 he was obviously under different kind of instructions. The Press, however, had an incredibly ingenuous story to account for the unprecedented success of the picketeers. They had, the papers said, adopted the brilliant tactic of arranging the girl students in a circle to form a ring around the picketeers, thereby preventing the police from getting at them, as if such delicacies have ever stopped our police from having a go at agitations!

Revenge on NTR

At the end of two hours of playful picketing the DCP asked the students to disperse, telling them that they had had their pleasure. They refused, and after some wrangling he ordered a lathi charge. The girl students were beaten. This annoyed the staff of the secretariat who had gathered along the verandahs of their offices to watch the fun; the parents were "naturally" angry to see their children beaten. They started stoning the policemen from inside. The Police Commissioner is said to have

received a bad injury on his face, an incident that would have in different circumstances led to large-scale police firing and deaths: In this instance the police entered the secretariat and chased the employees inside; they ran in, straight to the Chief Minister, surrounded him, abused him and gheraoed him, perhaps the most militant action during the last three years of a section of the public that has been most badly ill-treated by NTR. He has always treated the government employees as almost personal enemies, and now they had their revenge, taking advantage of the strange docility the administration had taken upon itself. They boycotted their offices for four days running.

The next day's papers put the whole thing in headlines as if it was Jallianwalabagh followed by the Mutiny. And even as the judges must have been preparing and writing the judgments, the anti-reservationists forced widespread bandhs and road blocks across the state. At the Prakasam barrage across the Krishna river, a busy bottleneck on the Madras-Calcutta highway, a handful of students blocked traffic for nearly three hours on September 5, as an obliging police force looked on, thereby holding up traffic for at least 50 kms either way. And further down the highway forward caste students of the Nagarjuna University squatted on the road and held up the heavy traffic for a further stretch. In Hyderabad, the secretariat staff continued their boycott of work and agitation against the CM. That man must have been terribly frustrated in his fascist instincts by this peculiar inability to handle trouble-makers as he is accustomed to. And all the while newspapers carried screeching headlines on every little thing the anti-reservationists did. It was in this intimidating atmosphere that the full bench consisting of one scheduled caste judge, one backward caste judge and one forward cast judge with an established reputation for his progressive views, held that the enhancement of reservations was unconstitutional.

Unfortunate Arithmetic

The Court struck down the GO on the principal ground that the Muralidhara Rao Commission's estimate of the population of BCs as 52 per cent of the state's population was erroneous. It also expressed itself against a reservation policy that reserves more than 50 per cent of jobs and seats. In arriving at its population figures the Court balanced the various estimates put forward by the forward caste petitioners and came to the conclusion that the proportion of BCs was about 35 per

cent. Law and the Constitution apart, the numerical estimate is perhaps the most unfortunate part of the judgment. The Court chose to completely ignore the detailed estimates provided by the state government, extrapolating from the 1921 and 1931 censuses, which showed that the BCs constitute at least 50 per cent of the population at present; instead it blindly accepted the calculation of the anti-reservationists who added up all the Kapu castes (many of which are BCs) to arrive at a highly inflated figure for the forward caste population and by elimination therefore a deflated estimate for the population of BCs. This chicanery they put down in cold print and distributed as a leaflet in the name of Prajabhyudaya Samiti, and repeated in their petition presented to the Court. This was pointed out in its reply by the state. If the Court even then had some doubts it should have directed the government to conduct a caste-based census or at least an extensive sample survey to arrive at the proper population estimate. Instead it chose to say that it had balanced all the figures put forward before it and arrived at the figure of 35 per cent. If one is not overawed by the supposed wisdom of the judiciary, one cannot help recognising that any serious opinion in this regard would require (i) a detailed study on the 1921 and 1931 censuses, which the court did not undertake, (ii) knowledge of the differential growth rates of the population of the different castes, regarding which no studies exist, and (iii) some elementary training in statistical analysis, which the judges do not have. Lacking at these, their Estimate is no better than the jugglery indulged in by Muralidhar Rao, and is likely to be worse since it is vitiated by the lack of partisan concern for the depressed that the latter had.

It is perhaps time that the entire matter was taken out of the hands of the vagaries of judicial pronouncements. The Courts are obviously being asked to do something that they have neither the constitutional authority nor the competence to do. Till now the rulers of the country, unsure of the likely militancy of the beneficiaries of reservations, have been dithering and allowing the issue to drift with successive court judgments. In the prevalent anti-welfare, anti-populist and anti-poor atmosphere the experience of Andhra may well encourage the government to quickly bring forward legislation, perhaps an amendment to Articles 15(4) and 16(4), making the 50 per cent barrier to total reservations a legal upper limit. The supremely confident stridency of the anti-reservationists was first

exhibited in Gandhian Gujarat and is now repeated in a state with a significant left history. To complete the picture we have the exhibition of a hapless reaction on the part of the BCs, both in Gujarat and in Andhra. This must have certainly opened the eyes of the rulers to the fact that in the absence of a proper political orientation, numbers do not count for much when they are on the side of the deprived, whereas power counts for a lot even on the side of a numerical minority.

The Real Victors

The left will dither as usual. Some of them may even congratulate the Courts and the government for recognising that it is not caste but class that matters. The left in India has always been remarkably large-hearted in identifying and complimenting radicalism wherever it exhibits itself and for whatever purpose. The real victors, in the eventuality of reservations taking a statutory beating, will be neither the lower middle forward castes, nor the principle of recognition to merit and competence, nor the sanctimonious aversion to pampering the weak too much, nor the theory of Marx as against that of Ram Manohar Lohia; the real victors will be the class of the provincial rich, the landlord-trader-contractor-broker class that has over the years built itself strand by strand into the sinews and muscles of India's ruling classes. In building itself up it has made full use of caste as a weapon and a tool. The propertied classes have never hesitated to use caste as a weapon in strengthening and reproducing class power; it is only the radicals who are worried that to talk of caste damages class struggle. There is not a single provincial politician, member of legislature, Chairman of a Zilla Parishad, Director of Co-operative Society, President of a Rural Bank, not a single contractor, supplier, trader, financier or broker who has not made essential use of his caste links to provide manpower, lung power and muscle power to facilitate his rise. Having done that, and even as they do that, they will not allow the backward and *panchama* castes to use their caste identity to get a miserable clerk's job or a college seat to get worthless degree certificate.

This is the essence of the matter, and it will be a sad day when the left acquiesces silently with the attempt to legislate an upper limit of 50 per cent for reservation. If that is done, it will not be long before an assault is begun on each and every one of the welfare measures won by the poor by hard struggle. The scenario fits into an increasingly visible pattern, does it not?

3. This Anti-Mandal Mania

It is precisely because reservations attack the caste system, an attack that the Indian polity can ill-afford, that there is so much fuss against them. There is perhaps no issue on which we are such hypocrites as caste. Nor any other which brings out all that is worst in us with such shameful ease. The moment VP Singh announces the decision to implement the Mandal Commission's recommendation of reservations for the backward castes, an avalanche of obscenity hits the country. It carries before it the Press, the universities, and opinion-makers of all kinds.

Arun Shourie, a one-time civil liberties leader, starts writing sickeningly casteist articles and editorials. He shelves temporarily his habit of delivering self-righteous sermons to the reading public and tactical advice to the National Front on its internal and external problems, and starts writing the kind of insulting stuff against the dalits that would have got him lynched if he had dared to so much as hint against the forward castes. An acknowledged constitutional expert like HM Seervai forgets for the moment the ideal of social egalitarianism that is one of the redeeming features of the Indian Constitution, and laments instead the death and destruction of merit and talent that egalitarianism has always been accused of leading to. Girilal Jain, whose explicit advocacy of Rajiv Gandhi's cause was tempered with a seemingly gentlemanly style of writing now comes out in rabid prose to demand the ouster of V P Singh's government on the ground that it has lost the sympathy of a handful of forward caste students in the north Indian capitals. Letter writers to the English language press whose staid views and laboured prose are a byword, suddenly turn poetic and start comparing the pranks of the anti-reservationists to the French student revolt of 1968 and the Chinese student uprising of 1989.

India Today, a newsmagazine that normally affects an objective and unemotional style of reporting sheds all pretence of neutrality and openly comes out in full blast to bulldoze the views of its substantial readership in English, Hindi, Tamil Malayalam and Telugu. It denounces the "wretched display of cynicism" of the National Front constituents and supporters, and attacks the "cynical waffling" of Rajiv Gandhi, not because all of them are covertly supporting the anti-reservation movement while defending reservations in public, but for precisely the opposite reason that they are not denouncing Mandal Commission's

recommendations openly. It publishes one of the more offensive cartoons against reservations: the picture shows V P Singh and a bunch of SC, ST and BC men and women happily lolling in a sea-borne ship with three flags indicating the three categories hoisted on the deck, grinning cruelly at the forward caste students who are sinking all round with their degree certificates held high. It is difficult to imagine a more atrocious caricature of reality, which is almost exactly the opposite, notwithstanding all the laments you hear about reservation quotas.

The entire forward caste Hindu community has suddenly become a solid rock. Fundamentalist and secular, Marxist and Gandhian, urban and rural, have all been united as nothing else would ever have united them. They are led by the academics, the whole lot of whom - left, right and centre - have suddenly discovered that the only legitimate division of society is between the talented and the inefficient, and between the rich and the poor. People who would have normally called you a Naxalite if you so much as spoke of class differences have made the sudden discovery that "the only dichotomy in Indian society is that between the haves and the have-nots," as an unlikely statement of a Haryana BJP leader puts it. *Caste will undoubtedly be the last of the iniquitous institutions to die out in this country. It will outlast everything else.*

Everybody has suddenly made the unbelievable discovery that there is some thing called 'merit' which has been in the possession of the Indian elite all these days, and which is now sought to be destroyed by VP Singh to please the wretched talentless backward castes and get their votes. A new term, and a new falsehood, have entered the ideological ballast of the Indian ruling classes. For four full decades it is the forward caste Hindus who have dominated every aspect of life in the country. They have held all the land, all the capital in trade, finance and industry, they have held all the top positions in administration, education, science, technology and medicine, and what a pass they have brought the country to! The economy is running a fever of nearly double-digit inflation, coupled with sluggish growth and paucity of resources; its politics is ridden with crises of all kinds and is perverted by the ills of corruption; its agriculture is stagnant even in green revolution show-piece areas; its administration is inefficient, unimaginative, and of course corrupt. And it is these people who today claim that if others are allowed to get in, that will spell the death of development for India!

It is not very important whether the Mandal Commission's listing of backward castes is very rational and scientific. That listing is undoubtedly the weakest part of an otherwise well-argued report. A rational debate concerning the identification of backward castes can be held, and objective criteria evolved, if that is all the issue involved. After all, the south Indian states have been implementing reservations for backward castes for more than two decades, on the basis of quite a reasonable classification of backward castes. But that is not the issue at all is proved by the agitational forms and slogans chosen by the forward castes. Just as a rational debate can and must be joined rationally, a casteist onslaught can only be fought in caste terms, and in the streets if necessary. The forward caste youth are not only going around insulting and humiliating the backward castes and scheduled castes, they further have the cheek to say that the government's decision has provoked caste war in the country. The youth are spoiling for a fight and their fathers are sitting at home writing articles, editorials and speeches, egging them on to fight to the finish.

It is difficult to forget Arun Shourie's initial editorials urging the forward caste youth to not allow the agitation to die out; and he is one editor who has consistently opposed all agitations, whether in his office or out in the streets. The pamphleteers against reservations who are glorified by the names of editors of newspapers and professors in our universities have the cheek not only to claim that it is reservations that provoke casteism, but also to add the patronising bit of advice that since employees who get into offices and institutions on reservations are humiliated and insulted at the place of work, it is in the interest of their own self-respect to give up reservations, which is rather like a thief saying that he has the habit of pocketing other people's valuables when he is in the mood, and so they, had better not possess any. The association of Class I officers of the government of India urges the government not only to withdraw the decision to implement Mandal Commission's recommendations but also to withdraw the existing reservations for scheduled castes and scheduled tribes, on the ground that such political expediency will have a deleterious effect on efficiency of administration; as of now 94.32 per cent of the Class I officers of the government of India are forward caste Hindus (plus a few elite Muslims and Christians), and what exactly is their record of

efficiency that justifies this casteist comment on 85 per cent of the population? In any other context such blatant deceit and hypocrisy would not have been tolerated, but then caste is quite a unique context for us Indians.

The extraordinary unanimity exhibited by the press is truly astonishing. Has it occurred to any honest press person - for reason drives us to presume that some among them must be honest people - to ponder whether this unanimity is caused exclusively by a superior concern for the future of this nation that the press possesses and Bindeswari Prasad Mandal did not - and Ram Vilas Paswan and Mulayam Singh Yadav do not - or by the more mundane fact that the entire press corps is staffed by forward caste Hindus, and that too principally Brahmins? After all, they disagree about everything under the sun; about capitalism and socialism, private sector and public sector, Rajiv Gandhi and V P Singh, Devi Lal and Arun Nehru, about every conceivable matter concerning the public life of this country. Why then does this remarkable unanimity prevail, all the way from the unlikely pair of Arun Shourie and Girilal Jain, through the English language columnists - who have probably never seen the poor village Brahmin and his destitute children about whom they are filling copious columns now, and many of whom probably have precious little of our cultural ethos left in them but still cannot forget caste prejudices - right down to the scribes of the vernacular press that normally echoes Devi Lal's diatribes against the Arun Shouries and the Goenkas of the newspaper world?

Everybody knows that if employment is all that is involved, reservation is a small issue. The role of the public sector in employment generation, which has never been commensurate with its share in investment, is now gradually being decreased. The initiative in investment is passing into the hands of the private sector, and there is very free talk of handing over even basic industries to the private sector. Even essential services like education and health are getting privatised rapidly. Within the public sector, many state governments are already implementing reservations for backward castes, and anyway VP Singh has promised he will not 'impose' the decision to implement Mandal Commission recommendations on any state government, a promise that was promptly followed by announcements from the chief ministers of Orissa and Himachal Pradesh that their states would not implement the

decision; Uttar Pradesh and Bihar would have followed suit if only both the states had not had Yadav chief ministers. And within what is left, VP Singh has excluded defence establishments, scientific and technological research institutions, and central government educational institutions from reservations for backward castes. What this leaves out, for all practical purposes, is a few jobs like postal runners and railway booking clerks, which is clearly nothing much to get excited over either way. *The highly emotional opposition to reservations, therefore, must be seen not in the context of employment and unemployment, but in the context of the caste system, and the continuing role it is playing in determining the distribution of resources and political power. It is precisely because reservations attack the caste system, an attack that the Indian polity can ill-afford, that there is so much fuss against them.*

To get a comprehensive look one has to see the totality of resources available in the country, and the institutional means by which they are apportioned among the people. Capital, land and the rest of nature are the three major sources whose ownership confers status and power; those who do not possess them labour on them to obtain a livelihood. The possession is for the major part with the forward castes or with the state which is again principally accessible to them. This is not just an incidental correlation of caste and class, not just a historic relic, but a real relation and a living reality. Sudipto Kaviraj, an academic whose name figures in progressive circles, has managed to convince himself of the unreality of caste (according to his opinion as quoted by *India Today*) to the extent of remarking that asking forward castes to give up jobs in favour of the dalits merely because their forefathers committed injustice ages ago is like saying that the Hindus can destroy the mosque at Ayodhya and build a temple there because some Muslim rulers in the past destroyed some temples and built mosques. It appears that when it comes to the caste question we take leave not only of our intelligence and our sensitivity to the feelings of other people (how else does one explain the obnoxious stuff that Arun Shourie is filling the *Indian Express* with, day in and day out), but even our capacity to see things which stare us in the face. Whatever Babur did or did not do to the temple which did or did not exist at the spot where Rama did or did not take birth is a historic relic, a happening or non-happening of the past. *Caste is very much a living reality. Caste was one of the principal*

determinants of the distribution of resources and power in medieval India, and the principal theoretical justification of exploitation; today it continues to play both the roles, in spite of a certain amount of capital penetration and political democratisation, the principal difference being that it is today juridically displaced from the high place it had in the age of the Dharmasastras. Caste is juridically dead, but very much alive politically and ideologically. If it is in general a theoretical fallacy to confuse the juridical form with the real content, one must be particularly careful in wishing away things which do not exist juridically, in a country like India whose ruling classes do not possess the requisite measure of progressive potential to be able to afford even an ideologically camouflaged reflection of all real political and economic relations in juridical forms. The inability to see this point is one of the main reasons why Marxist analysis of caste in contemporary India has generally been very unsatisfactory.

Tickets to the assembly or parliament at election time, public works and excise contracts, co-operative loans, industrial licences, supply contracts, managerial jobs in the private sector, a vice-chancellor's post, or even a favoured relation with the administration or a profitable position within the faculty of the universities where academics unburden themselves of weighty lectures on caste and class (among other things), not one of these is obtained without the use of caste. *Caste plays a significant role in shaping the composition of India's elite; the propertied classes use their caste to maintain and reproduce their status, and to acquire commensurate political power.* Those among the forward castes who are not blessed with much property at birth use their caste to climb up the political ladder and subsequently acquire property. Caste also plays an important role in cementing the blocks within the elite for intra-ruling class conflicts, and for mobilising the middle classes for assaults against the poor. The poor among the forward castes - who are undoubtedly numerous - have one advantage which the dalits do not have, viz, the use of caste links with the rich to obtain a small job or a petty loan; not all of them always succeed, but the possibility is undeniably present.

The forward castes use their caste identity for all these purposes, but when the backward castes attempt to use their caste identity to gain a foothold in the corridors of power, or even to get an ill-paid clerk's job - there is so much fuss about destruction of merit and death of efficiency.

The casteism of the forward castes is never seen as casteism, for it is an advantage always possessed by privileged groups that their existence is taken to be part of the natural order of things. It is the challenge to that casteism that is seen as casteism. The unwritten reservation that the forward castes enjoy in the form of 'connections' is incomparably more potent than all the recommendations Mandal has made for the benefit of the backward castes, but that is not seen as reservation.

But connections are not all; the list of reservations available in society is quite long, except that nobody thinks of them as reservations unless they take statutory form, and are meant for the benefit of the oppressed castes. Good public school education is reserved for children of the rich, and that reservation goes on for generation after generation. I am sure most people will find it terribly illogical if one says that just as everybody now argues that reservations in education to the dalits must stop after one generation, and from the second onwards they should fend for themselves, it should be equally made a rule that if parents have had public school education, their children and the subsequent generations must be denied access to such schools and must be made to study in government schools. A cultural atmosphere at home that is conducive to book learning is reserved for the Brahmins and the Brahminised upper castes. It will no doubt be regarded as a monstrous suggestion if one says that since these people have enjoyed this reservation for so many generations, hereafter Brahmin children will be removed from their homes at birth and brought up in a hostel where they will have to share a common cultural atmosphere with other castes. The 'right connections' is another reservation widely prevalent in society, and that again is available only to the rich and the privileged communities. This reservation too, far from ceasing after one generation or two, goes on for generation after generation, and indeed becomes stronger as time goes on.

But of course the biggest reservation of them all is property. Property is reserved for the progeny of the propertied, for generation after generation, irrespective of talent or merit. It will no doubt be treated as sacrilegious if one suggests that hereafter property shall not be inherited by the children of the propertied, but by the persons who possess the greatest merit in handling it. After all, if it is a national disaster for jobs to be given to meritless persons on grounds of caste,

it is equally a national disaster for property to pass into the hands of persons not competent to put it to use for no reason other than a genetic accident. And let nobody answer that if they are inefficient in managing property then they will lose it sooner or later, and let nobody prove a marginalist theorem to support this. We know very well that no such thing happens in real life.

The lawyers of the Supreme Court, in an astonishing step, boycotted work for a day in protest against the Mandal Commission even while the writ petitions filed against the Mandal Commission's recommendations were pending before the Supreme Court, and the Court had announced the dates of hearing; if the matter was something that affected the life and livelihood of the poor, these very same lawyers would have refused to so much as sign a protest note, on the ground that the matter is *sub judice*; and yet when it comes to the Mandal Commission, not just one or two of them, but a majority of the Supreme Court Bar Association finds it possible to boycott the court without any compunction whatsoever. Now, all these lawyers have five figure monthly incomes, and quite a few of them six-figure incomes. Not one of them requires a government job for his or her children, they have all the required connections to push them into the affluent private sector-starting with their own practice, which will be inherited by their children whether they possess any forensic talent or not. This fact itself proves that what is involved in this whole anti-Mandal mania is not employment but casteism, but that is not the point I want to make right now. The point is: will these legal luminaries agree to the passage of a law saying that hereafter the practice of a lawyer shall not be inherited by the son or daughter but by the most talented law graduate in the neighbourhood, for any such reservation on genetic grounds is destructive of merit, and harmful to the country?

This whole humbug about merit is the most trying piece of double-speak the Indian elite has invented in the last four decades. It is difficult to believe that a man of the world like Arun Shourie, who certainly does not have the excuse of innocence that is the only plea the anti-Mandal adolescents can possibly take, really believes that he occupies the august editorial chair at the *Indian Express* for reasons of sheer merit. Arun Shourie's egoism is evident in his style of preaching, but it is difficult to believe that even egoism can blind a man to such an

extent. If Arun Shourie had not suited Goenka's politics he would not be editing *Indian Express*; and if he did not suit some proprietor's politics he would not have been editing any paper at all, notwithstanding all the talent he may possess. He is certainly aware of this, and yet he finds it possible to fill that paper, the largest circulated English daily to this country's misfortune, with casteist filth day in and day out about the merit the forward castes possess and the imbecility of the dalits. What is most offensive is the definition being adopted for knowledge, competence, etc. *We have inherited from Brahminical Hinduism a most undemocratic definition of knowledge, that dismisses as not worth knowing all that the working people know by the very nature of the work they do. They possess knowledge about cultivation, about weaving, about masonry and smithy, and even about the proper cremation of a dead body. This knowledge has been the basis of the reproduction of society's material life, and yet Brahminism would not recognise it as knowledge.* That non-recognition goes with the appropriation of the material wealth produced by them. You cannot allow the working masses to claim the title of knowledge for their skills and yet deprive them of the fruits of what they produce. And so only knowledge about the Srutis and Smritis was recognised as knowledge, and proficiency in this alone signified intelligence. If a democratic revolution had properly taken place in India, and if modern science and technology had grown out of the knowledge the working people possess, perhaps we would have broken philosophically with this Brahminical epistemology, but instead of that we have completely destroyed even the basis for the traditional knowledge the working people of this country possess and grafted on to our economy the science and technology borrowed from abroad in the form of textbooks, which again has been monopolised by the very same Brahmins who have established a monopoly of book knowledge. *Thus the Brahminical theory of knowledge continues to shape the curriculum of our schools and colleges, and it is proficiency in this knowledge defined as book learning that is being called 'merit.'* One only has to imagine scrapping this curriculum and replacing it with knowledge about cropping, weaving and carpentry, and imagine then how handicapped the Brahminised upper castes would find themselves in such schools, to recognise the ridiculous snobbery of this whole debate about 'merit'. Either we get rid of this undemocratic educational culture, or else - since there are no signs of

such a change - accept the necessity of providing with reservations those people who are at a disadvantage in this educational culture, not because they are incapable of book learning but because they have been deliberately kept out of it for ages. And since it is on the basis of caste that they have been kept out, it is only on the basis of caste that we can identify the needy in this matter. It requires a special blindness to ignore the fact that our cultural life is still caste-determined.

As for the rest, so long as caste remains one of the determinants of property and power, so long as it is used by the rich and the powerful as a means of maintaining and strengthening their domination, it remains the moral right and indeed the political duty of the poor and the deprived to use their caste identity in the struggle for their liberation. *Class struggle and caste struggle are not two opposite or contradictory things, but are closely interwoven and coterminous struggles.*

To end, it is necessary to emphasise that it is pointless to see the matter in terms of employment opportunities, their dearth or paucity. The whole issue is best seen within the context of the growing authoritarianism of the Indian polity. The Indian ruling class has passed the stage where it feels it can accommodate the needs of the masses at least up to a point. Nor is it any longer really interested in long-term development on the basis of a planned use of the nation's resources. Instead its various sections are busy grabbing all that they can lay their hands on, and this is a no-holds-barred activity. Not a single one of the measures meant for the welfare of the masses, especially the rural poor who mostly belong to the Scheduled Castes and Tribes and the Backward Castes, has been implemented, nor are they likely to be implemented in the future. Land ceilings, minimum wages, dry land development, rural industries, not one of these has been blessed with implementation. On the other hand the rural propertied classes are appropriating to themselves the control of not only land but all the natural resources that used to be available to the poor and provide them with some livelihood. Forests, fisheries, firewood-all of nature has passed from the hands of the labouring people into the control of the rich.

In this situation, any assertion of the poor for better opportunities is met with a policy of no appeasement and ruthless suppression. Movements of the rural poor are met with police brutality or the assaults of landlords' goons. And the aspiration of the upper fringe of

the oppressed for a decent job or a share in political power is met with the kind of obscene attack that we are witnessing today. Just as the caste identity is used to mobilise the middle classes under the uneasy caste is again being used to incite the middle classes among the forward castes against the poor. Such a caste mobilisation can only be fought in caste terms, and there should be no inhibitions on this score.

4. A Tangled Web: Subdivision of SC Reservations in AP

The conflict between two dalit communities of Andhra Pradesh - the Malas, who have had the lion's share of the scheduled caste quotas of jobs and educational opportunities, and the Madigas, who have agitated for caste-wise division of the quotas - could perhaps have been resolved socially. But thanks to the recourse taken to executive fiat and legislation a tangled web, involving not only the two communities and the state government but also the higher judiciary, the central government and the national commission for scheduled castes and scheduled tribes, has been woven.

The Mala-Madiga conflict in Andhra Pradesh over the sharing of the reservation quota for scheduled castes is by now a classic case study of what happens when problems that are best resolved socially are thrown upon the shoulders of the law because of the intransigence of one side or the recklessness of both sides. It is not that the law is irrelevant for a democratic resolution of social problems. After the social process of resolution has worked itself through to a broad consensus, the law can enter and consolidate what is already resolved and thereby give it permanence, continuity and the assurance of authority. This would ensure that each new generation need not struggle for it again until an alteration of the solution is desired. In a situation where there is as yet no consensus the law if used judiciously and to a strictly limited extent can also exert the pressure of authority and impel the social groups concerned to resolve the problem. If nothing else, it can make it an enforced habit to look the problem in the face.

These are two legitimate roles the law can play. But in the absence of a basic will in the social groups concerned to resolve the problem rather than fight it out, or in the face of the intransigence of one party to it, it would be ill advised to make the law a substitute for the lack of preparedness in the hope that it will somehow work magic. If it is, it is

bound to lead to the kind of convoluted tangle that the 'categorisation' issue is witnessing in Andhra Pradesh today. This would be so in the best of circumstances but particularly so when the law is an instrument in the hands of the kind of political executive we have today: opportunist, unprincipled and always on the lookout for the political mileage to be got from tackling social problems.

The limitations of purely legal solutions to social problems is illustrated in a different dimension by the statutory provisions pertaining to untouchability and violence on women. Perhaps there were many who honestly believed that the mere enactment of these laws would effectively change things. In any case, these laws were made on the basis of a seemingly progressive consensus in society. Unlike land reforms and caste-based reservations which were (and in the case of reservations, still are) challenged vehemently by the losers of the privileges taken away thereby, nobody opposed the legislation against untouchability and untouchability-related offences or the one that takes a penal view of domestic violence on women. At any rate, they did not do so vocally. *But the laws have never worked smoothly because there never was any real consensus behind them; there was only inability to oppose them with any legitimate argument.* If the laws had been enacted today, perhaps the Sangh Parivar ideology would have come in handy. But they were mercifully enacted well before the Babri Masjid was pulled down.

In any case, the consequence of the lack of an honest consensus to the effect that untouchability and wife-beating are serious crimes has been that ensuring the implementation of these statutes is an uphill task for dalits and women. As all activists know, it frequently requires one agitation for a first information report (FIR) to be properly booked, another for the suspects to be arrested and yet another to ensure that a charge sheet is honestly drawn up. All this is provided that the victim is not in the meanwhile beaten down by social, and possibly physical pressure to give up and join the mainstream of pliant servitude. The plain fact is that the enforcers of the law have little enthusiasm for giving effect to these laws, and even the judiciary is not always an exception. On the other hand, the very existence of these statutes has, if nothing else, forced society to constantly contemplate these crimes, make it a habit to see them and think of them as crimes, and act accordingly. This in itself can help wear down the resistance to change.

The laws are therefore far from being useless or discardable: a constant pinprick has undoubted use, apart from an occasional success in prosecution. And the force of penal legislation was perhaps the least uncivilised force that could have been used against the holders of the inhuman privileges rendered culpable thereby.

The subdivision of dalit reservations is in a slightly different category. This is a matter not of oppression but of inequality between the oppressed - though structured in an oppressive manner, given the ladder-like structure of the caste system from the top to the bottom. What was needed was acceptance by the relatively well-placed among the dalits that the demand of the more disadvantaged was just. A law enforcing equality in the absence of such an acceptance would be tortuous in its making and lame in its working. Without doubt it would have its efficacy, if nothing else, in making contemplation of the demand and some degree of concession to it a habit. In any case, those who are at the receiving end of inequality can never be convinced that what is usually called the majesty of the law must await the consent of the mortals on the other side who have no reason for being in a hurry to yield. And yet the structuring of such a law is bound to be painfully protracted, and in its functioning the law is likely to be equally painfully hobbled.

There are 59 castes listed in the scheduled caste order pertaining to Andhra Pradesh. The Mala and the Madiga are by far the largest of these castes. Together these castes make up about 80 per cent of the scheduled caste population of the state. The problem of subdivision has therefore taken on the contours of a Mala-Madiga conflict. According to the 1981 census (no more recent break-up of the populations of individual scheduled castes seems to be available), the Malas numbered 28.94 lakh, the Madigas 35.72 lakh and the remaining 57 scheduled castes together about 15 lakh - the total dalit population being 79.61 lakh. Among these others, the Relli community which is preponderant in the three northern coastal districts, is somewhat sizeable. Though these figures are nearly 20 years old, there is no reason to believe that the relative proportions of the various communities within the dalit population has changed to any appreciable extent since then.

The Malas and the Madigas are both 'untouchable' and suffer equally all the indignities of outcastes. The 'savarna' Hindus have never differentiated between the Malas and the Madigas - or any of the dalit

castes, for that matter - in the treatment meted out to them as outcastes. But there is not only difference in occupations but also a miniature hierarchy within the dalits that puts the Malas on the upper rungs of the ladder (to use Ambedkar's felicitous metaphor) and the Madigas down below. The Madigas are outcastes for the Malas, just as there are castes even lower than the Madigas that are outcastes for the Madigas.

Whatever be the historical origin of this ladder-like system of Hindu society, it has long been recognised that it has had the effect of ensuring that Hindu society reproduces itself stably. It has successfully legitimised subservience to superiors by placing somebody beneath all but the lowest rung. To rebel against one's caste superiors is to open the gates - at least the gates of moral sanction - for the rebellion of one's caste inferiors against oneself. Psychologically, the caste oppressor is not an unbridgeable alien - as he has to be to provoke outright rebellion — for he is a part of every body's identity. To condemn oppression is to condemn at least a little bit of oneself. This unwelcome burden, coupled with the arch-conservative notion of 'dharma' that sanctifies the ladder of Hindu society as definitive of divinely-ordained righteousness, has acted as a built-in deterrent against rebellion. The option of understanding these psychological barriers as merely an ideological reflection of the physical fear of the rebellion of those below may be left open to those who like to package social history in neat rationalisations.

'Merit' Argument

But no deterrent, physical or psychological, is ever perfect, and Hindu society has ever been buffeted by shocks of rebellion from those down below on the caste ladder. What is remarkable is that whenever caste domination has been questioned it has been justified by the notion that the holders of privilege have some quality called merit that justifies the privilege. In the old days it was the merit of past deeds translated into a nobler birth and ritual purity in this life; today it is the merit of hard work, intelligence and efficiency. It is always something with them that justifies the privilege; it is never the pre-existing social-structure of differential privilege in which all are placed by virtue of the accident of birth.

The modern argument of selfless hard work and consequent capability and efficiency was first discovered by the Brahmins in answer to non-Brahmin rebels (or interrogators, to use currently fashionable language)

in the Tamil society of the early 20th century. It has ever since been the answer of holders of privilege at each rung of the ladder. The upper Sudras joined the Brahmins in hurling this argument at the 'other backward classes' (OBCs), the most recent instance in memory being the campaign in the northern states against the Mandal Commission's recommendations - by far the ugliest political movement of modern India. Now some of the Malas in Andhra Pradesh are using the same argument. Mala youths belonging to villages in east and west Godavari districts where the conflict took a physical form for a while were asked why they were not prepared to accept the Madigas' legitimate complaint that the Malas availed themselves of an unduly large proportion quota. They replied that the Madigas of the scheduled caste "eat beef, drink and loaf around, whereas we work hard."

It was in 1995 that the Madiga Reservation Porata Samiti (MRPS) came on the scene. It declared that the scheduled caste quota of reservations was being availed of disproportionately by the Mala community and demanded that the 15 per cent quota allotted to the SCs in the state be subdivided and fixed quotas allotted to properly-identified subgroups of the 59 dalit communities. The demand itself is not new. It appears to have first been placed before the then chief minister of the state as far back as in 1972. Subsequently, determined legislators and other public figures from the Madiga community have been submitting representations to each successive chief minister. But this is the first time it took the form of a mass movement. And what a remarkable effort it was while it lasted!

The movement began with some advantages. Like the Malas, the Madigas are spread across the state. If not every village, then certainly every second or third village in every corner of the state would have at least a few Madiga families. Secondly, though the reality of a hierarchy within the outcastes and unequal access to reservations was known, felt and even mildly articulated for a long time, it was being expressed as a mass upsurge for the first time. It is a matter of common experience that a mass expression of a genuine public grievance for the first time attracts the most innocent and purest following, and also the most disinterested sympathy from the rest of society. It is in the course of the second or third round that the expression and the sympathy are contaminated by what passes in the meantime and by self-serving

afterthoughts. Thirdly, the demand the Madigas raised was plain, simple and easily understood: divide up the SC reservation quota and give us our due. It was moreover felt to be unproblematic since the backward class reservation in the state has long since been subdivided into four subgroups, which subdivision has been upheld by the Supreme Court. Fourthly, the Madigas found a dynamic a charismatic leader in Manda Krishna. A former radical from Warangal who was later suspected and shunned by the radicals and who thought it safer as a consequence to leave the district and settle down at Ongole, Krishna rose very fast as the founder and enviably popular leader of the MRPS. His lieutenant was Krupakar - also a former activist of a pro-Naxalite student organisation - a less charismatic and less dynamic young man but a capable and dedicated organiser nevertheless.

The movement took the state by storm in a matter of months. The first and most audacious thing the Madigas did was to suffix the caste tag to their names. Krishna became Krishna Madiga, Krupakar became Krupakar Madiga and so on down the line. In a society that addresses any number of Krishna Shastris and Krishna Reddys respectfully the discomfort this caused was most amusing to watch. As 'Madiga' has served as term of abuse, whether directed against a Madiga or otherwise, it was most discomfiting to be confronted by someone who wanted you to address him as 'Krishna Madiga.' And when people confessed to themselves that they found it embarrassingly absurd to think of someone as Krishna Madiga, they were forced to ask themselves why they did not find it absurd to think of some one as Krishna Shastri, Krishna Reddy or Krishna Naidu. Since true victory over an oppressor lies not in putting a bullet through his head but in making him turn a self-critical eye towards his own pretensions to superiority, it must be said that this deliberately chosen tactic of the Madiga movement did as much as anything has ever done to puncture upper caste arrogance.

On the other hand there was a false note from the very beginning, though being at the beginning it was felt to be understandable. All movements, it appears, require a suitable image of an evil enemy to sustain themselves. The Madiga movement conjured up the image of the oppressive, cunning and selfish mala who by craft and deceit took away all the benefits given by the state to the scheduled castes. It is a

fact that the Madigas, apart from not being able to avail themselves of reservations in proportion to their numbers among the SCs, also suffered the indignity of being looked down upon by the Malas. This 'local' hierarchy, which may legitimately be treated as a micro-level inequality by those looking at the caste system as a whole, would not necessarily be perceived as merely 'local' or 'micro' by those who belong to that level. This much is understandable. So not the rhetoric that isolates the Malas from the caste system as a whole and makes them out to be the principal enemies of the Madigas. It was even said by the Madiga leaders that the neo-Brahmin is more dangerous than the Brahmin, and that is why the Mala is a bigger enemy. Whether or not the neo-Brahmin is truly more dangerous than the original article, applying that appellation to the Malas was absurd.

The Madiga demand, so far as reservations were concerned, could well have been expressed by saying that the differential social positions of the various dalit communities made it impossible for all of them to have equal access to reservations and that it was therefore necessary to divide up the reservation quota and give to each properly constituted subgroup its due. It could have been justified through an appeal to the same logic that motivated the provision of reservations in the first place. But would such a sanitised and merely rational expression of the demand, apart from not adequately expressing the Madigas' long-standing resentment at being looked down upon by their fellow outcastes, evoke the mass emotional response necessary to create and sustain a mass movement? Perhaps the movement would be possible without a tangible image of a personalised enemy and based on a purely rational motivation. But would it not then be difficult to paper over internal difference or tide over inconvenient organisational crises?

But from where does this realisation of the functional utility of such an image spring before any troubles have been sighted? Or is it the leader or leaders that need a tangible enemy to project themselves as indispensable, as valiant fighters around whom all should rally? Perhaps the image helps discredit all challenge to their leadership as a conspiracy of the enemy? Or are we talking of a purely human trait which has nothing to do with the possibility or otherwise of a mass movement - the inability easily to conceive of injustice done to oneself without seeing behind it the sinister machinations of an evil one?

These are interesting questions to ponder, though the tradition of Indian intellectuals who consider themselves close to popular movements is to look only at their political aspect. Subjecting movements to social-psychological critique, much less moral critique or analysis, is foreign to that tradition. The more is the pity, since such a critique would serve a very educative purpose.

Even more disturbing than the way the Madigas articulated their demand was the response of the Malas to the movement. There were a few honourable exceptions, especially among the activists of left, democratic and dalit organisations who belonged to that caste. But those whose stand could well have made a substantial difference to the trajectory of the agitation were the top leaders of the vibrant dalit movement of the state. Almost all these top leaders are from the Mala community - which fact again reflects the dominant position in which that community is placed among the dalits of Andhra Pradesh. A positive response from them in keeping with the principle of social justice would have initiated a process that may well have structured a consensus among the dalits on the Madiga demand. The social resolution spoken of in the beginning could have come only through them, if at all. But they did not rise to the occasion.

Granting these leaders their bona fides, one can well understand their predicament. The unemployed youth of their community, dependent almost exclusively on reservations for their employment prospects, would certainly not have taken kindly to any concession to the demand of the MRPS. That meant the leaders' standing was at stake if they took a stand sympathetic to the Madigas. But, as the experience of the less highly placed in the dalit movement and mala activists in other democratic movements who did take a positive stand has shown, the difficulty was not really insuperable. After some initial hostility and even ostracism, their stand was accepted by their caste people. In any case, the consequence of the silence of the dalit leadership has been such that one can only wish that some of them at least had had the courage to speak out.

One answer frequently given to this complaint is that if they had indeed taken a stand they would have lost their relevance as leaders of their community and events would have taken no different course. But one is not talking of merely declaring a stand in support of a genuine demand.

If a concerted effort had been made on that basis to begin a process of reconciliation guided by the larger need of unity of the dalit communities to face the discrimination and physical atrocities that are their common lot, perhaps events would have taken a smoother course.

Counter-Campaign

In the event, almost all of the important dalit leaders of the state remained mute spectators, and the gap was filled by one PV Rao, a government servant, who certainly did not have the kind of experience organising a mass dalit movement that the others had, such experience as would have helped temper any tendency to extremism. He formed the Mala Mahanadu and went about organising a 'no holds barred' campaign against the demands of the MRPS.

The campaign was based on a mixture of partly reasonable but mostly imagined or invented arguments. Strong objection was taken to the picture created of the cunning and scheming mala as the root of the unequal access to reservations, and rightly so. It was also argued plausibly that what is seen as a Mala-Madiga difference is in fact a regional difference that cannot be cured by a horizontal subdivision of the SC reservation quota. It is a fact that there is a relative preponderance of the Mala community among dalits in the coastal districts that are economically and educationally more developed, and one of the Madigas in backward Telangana and Rayaleseema. And the scavenging caste of Rellis, who lag behind even the Madigas, is confined to the three north-coastal districts, which are extremely backward socially notwithstanding the presence of a sizeable industrial city in Visakhapatnam. But this plausible argument turns out to be of no consequence when it is seen that even within a given region, there is not only social inequality among the dalit castes but also inequality in the relative proportions of members of each community availing themselves of reservations.

The rest of the Mahanadu's arguments have little persuasive value. It was said that whereas the Madigas had a vocation (leather work) of their own wherein they could receive further aid from the government if their advancement was desired, the Malas had no caste vocation and have to compete with others as agricultural labourers. That the Madigas are leather workers by caste is true, but then the leather work - skinning dead cattle, tanning hides and making and repairing chappals

by hand - has hardly been a propellant of social advance even aided (as has occasionally been the case) by government loans. Reservations in education and employment have been sought and justified on both social and economic grounds. They have been viewed as an instrument for helping toiling castes to move out of the confines of inherited modes of low-paying toil based largely on traditional technology and commanding, within Hindu society, little social regard or opportunity of wider knowledge or social advancement. They have been regarded as a passport to a mode of life that is more productive and hence more remunerative, and one which carries greater status as well as opportunities for expansion of knowledge and skills and further social advance. This has nothing to do with acquiescence in the Brahminical ideology of degradation of manual skill and the knowledge it carries. Resisting that degradation and asserting the self-respect of all toil and knowledge-based skill it involves does not, on the other hand, imply acceptance of stagnation at the level ordained by caste.

It is no answer therefore to say: give the Madigas more loans to buy better implements and make more chappals per day. Those who continue to make chappals will certainly seek such assistance, and will demand respect from society for their skill and toil. But the community as a whole is entitled to ask for special provisions for sharing the wider province of knowledge and skills and partaking of the consequent economic and social advance.

In any case, the Mahanadu plea is the kind of argument made first by the Brahmins and later by the other upper castes against reservations as such: give them help for economic upliftment, and we too will learn to honour the dignity of labour, but do not breach our preserve of expanding knowledge and the status and opportunities it carries. The argument as well as the answer to it will become clearer if one goes below the Madigas to castes such as the Rellis, who have as their exclusive vocation scavenging, in which they face no threat of competition. Nor do the Rellis have any scope for advancement if they remain scavengers. It was also argued that instead of fighting among themselves for subdividing their common quota, dalits should jointly fight for increasing the SC quota commensurate with the proportionate increase in dalit population and for a proper implementation of reservations, including the backlog of unfilled

vacancies. There is no reason, however, why the desire for justice inter se should wait upon the latter task or tasks. The desire and the tasks can proceed together, provided both sides - particularly the more privileged side - make sure that the struggle for subdivision and the response to it do not vitiate the atmosphere to the extent of making the united struggle for the common goals impossible. In any case, this is again no different in principle from the argument offered by the upper caste anti-reservationists: let us fight not over division of the existing job opportunities but for the creation of more. The two struggles can well go together, and the onus of making this possible lies on the more privileged and not the less privileged. To ask the disadvantaged to give up their just demand of equal opportunity in order to pave the way for the unity required for a common fight for greater opportunities is plainly unethical.

But the most commonly heard and least justified argument was that the whole Madiga movement was a creature of chief minister Chandrababu Naidu. It is true that the ruling Telegu Desam Party (TDP) has ever been on the lookout for the social gaps left by the Congress. The dalit support for the Congress since the days of Indira Gandhi was structured through the rural dalit leadership, which was mostly mala by caste. Hence there was ample opportunity for the TDP to attract the support of the Madigas. For this reason Naidu, a politician as crafty as they come, responded sympathetically to the MRPS. To stand this on its head and damn the MRPS as a creature of his is without any justification.

The MRPS in the meantime went from strength to strength, quite successfully putting pressure on political parties and other organisations in the public arena to support its demands. Most parties and organisations extended verbal support, if only because they could find no argument to answer the demands. The state legislative assembly passed unanimously a resolution supporting the demand. The state government, which in any case saw political mileage to be derived from it, set up a judicial commission of enquiry, the Ramachandra Raju Commission, to enquire into the allegation of a few schedule castes securing disproportionate benefit from reservations to the detriment of the others.

Set up through a government order issued on September 10, 1996,

the Commission submitted its report, substantially agreeing with the complaint of the Madigas, to the government in May 1997. On June 6, 1997, the government issued a GO subdividing the 15 per cent quota of reservations given to the scheduled castes into four categories. Group A was to consist of Relli and related castes (12 in number), mostly scavengers by vocation, identified as the most disadvantaged, who would get 1 per cent and be placed in the first of the roster slots allotted to SCs; group B to consist of the Madigas and related castes (18 in number), who would get 7 per cent; group C, consisting of Malas and related castes (25 in number), who would get 6 per cent; and group D, consisting of Adi Andhras and related castes (four in number), identified as those who had benefited the most from reservations, who would get 1 per cent and the last of the roster points allotted to SCs. Groups A and B were identified as having got less than proportionate benefit from reservations and C and D as having got more than proportionate benefit.

The Mala Mahanadu predictably, then went to court. On September 18, 1997 a full bench of the Andhra Pradesh High Court delivered a judgment characterised by convoluted logic, holding the GO *ultra vires* the state government's powers and unconstitutional. The only reasonable point made by the court was that the state government should have consulted the National Commission for Scheduled Castes and Scheduled Tribes (the SC and ST Commission) before taking the decision to effect the categorisation. Article 338(9) of the Constitution says the government shall consult the Commission on all major policy matters concerning SCs and STs. It was argued by the state government before the bench that the categorisation was not a major policy matter, and alternatively that the word 'shall' need not be interpreted as mandatory.

Whatever the technicalities of interpretation, the court laid down a sound principle in insisting that 338(9) was a mandatory provision. But instead of holding the GO unconstitutional on the ground of non-consultation it could have upheld it prospectively subject to consultation within a reasonable time period, and directed the government to enforce it only thereafter, if it still wished to: Article 338 makes it clear that the opinion of the SC and ST Commission on matters pertaining to the safeguards provided for SCs and STs is not binding on the government. The latter may differ with the opinion,

but it must explain the reasons therefore to the state assembly. But the high court found a very odd argument to hold that the GO was even otherwise *ultra vires* the powers of the state government.

Article 341 makes it clear that the list of scheduled castes, declared by the president, can be modified only by parliament. But that is not what the government sought to do. The list would not be altered in any way. Only the 15 per cent reservation of seats and jobs for the castes in the list would be apportioned among them in a more equitable manner by setting fixed proportions apart for subgroups of them that are distinguished by disparity in their ability to avail of reservations when bunched together. The legality of such subdivision of castes into backward and more backward for the purpose of equitable subdivision of the reservation quota has been upheld on more than one occasion by the Supreme Court, the most recent judgment being that of the nine-judge Constitution bench in the Mandal Commission case.

The Andhra Pradesh High Court did not go against the Supreme Court's view. It was argued, however, that such a subdivision was permissible only in the case of backward castes and not in that of scheduled castes. The court held that the recognition of certain castes as scheduled castes by the president was tantamount to identifying them as the (absolutely) most backward among all the castes; and this being the defining characteristic of the scheduled castes any further identification of the more backward among them would amount to cutting down the list declared by the president, effectively putting the others outside the SC list. A more peculiar mode of judicial reasoning than this, which led to the conclusion that the state government had exercised a power that only parliament had, would be hard to come by.

As a matter of fact, there is nothing in the Constitution or administrative practice to support the view that scheduled castes are defined by degree of social/social-cum-educational backwardness along a scale applicable to all castes. The SCs have always been identified by untouchability, which is an absolute characteristic. It is arguable that there are some non-scheduled castes such as nomadic communities, plains tribes and denotified communities which are socially and educationally more backward than the SCs, but they have been included in the BC and not the SC list because they are not outcastes. In Hindu social practice there is, a clear and unambiguous

distinction between *savarna* (however lowly) and '*panchama*', and that is the basis on which the scheduled castes have been identified.

Physical Conflicts

In the whole literature on the administrative and judicial understanding of caste, it would be hard to come by the thesis that it is the degree of backwardness (howsoever defined and howsoever measured) along a scale applicable to all communities that defines a scheduled caste. The discussions in the constituent assembly show 'scheduled castes' was intended to be another name for what in those days were called the depressed classes - that is, the outcastes. In any case, untouchability has always been regarded as the principal defining characteristic of scheduled castes. Being an outcaste is an absolute disability and not a question of degree along a universal sale. Within this absolute category of untouchables, there may well be relative backwardness, as measured by relevant indices. The recognition of this reality does not by any means put the relatively more developed outside the list of *panchamas*. They continue to be untouchable despite there being more backward untouchables.

In fact the only support found by the High Court for its opinion is the rhetorical description of the scheduled castes as the 'backward-most,' the abysmally backward, the lowliest of castes, etc, by the Supreme Court in certain judgments. Most of these judgments were rendered by VR Krishna Iyer, a judge with his heart in the right place but notoriously given to rhetorical expression in the service of judicial sensitivity to the problems of the disadvantaged.

To say that the backward-most of the castes are designated scheduled castes by the president, as Krishna Iyer has said in the judgments relied upon by the High Court can be taken as rhetorical acknowledgement of the unparalleled plight of the dalits, or, more literally, to mean that untouchability, the principal defining characteristic of the scheduled castes, makes them the lowliest, the backward-most, etc. It is a rather strange procedure of interpretation that performs a semantic reversal and turns this descriptive or rhetorical expression into a definitive characteristic and argues that there is some scale of backwardness on which the castes are placed, that those found in the bottom slot are declared scheduled castes, and that any further recognition of degrees of backwardness within that category amounts to putting some of the

lowliest above the lowest and therefore outside the list of scheduled castes. But perhaps this is what results from our kind of adjudicative machinery, which expects judges who decide legal issues arising from social problems to be sociologists, anthropologists, historians, economists and environmentalists in addition to being jurists - and all this with the sole help of lawyers whose principal talent lies in quibbling.

After the GO was struck down by the High Court there were physical conflicts in the last week of September and the first week of October 1997 between the two principal dalit communities in East and West Godavari districts. The trouble broke out when Mala youths celebrating 'their victory' in the High Court made provocative comments or indulged in provocative modes of expression of glee, rubbing salt into the wounds of the vanquished. One Madiga youth, Chelluru Mira Sayabu of Chintalacheruvu, in East Godavari district, was clubbed to death by some mala youths on October 6 and in some villages of neighbouring West Godavari district there were non-fatal attacks in reverse. It was basically a case of those who were numerically preponderant in the particular village taking it out on the other side in celebration or resentment, as the case may be. Mercifully, this phase was short-lived. In much of the state, except a few of the coastal districts, higher education and government employment seem so remote to all but a small minority of youths of any of the 59 dalit castes that conflict going beyond mutual resentment was in any case unlikely. But this is not to say that resentment and some degree of bad blood have not come to stay as definitive components of the relation between the relatively well placed and the relatively disadvantaged of the dalits, mainly the Malas and the Madigas.

Indeed, this is one of the unfortunate consequences of dependence for a solution to the problem on the law and administrative action unsupported by any effort to work out a social consensus. However, the blame for this is to be put not on those who pressed for an immediate administrative resolution but on those who made no effort to resolve it otherwise refusing to acknowledge the very existence of a problem. The state government, which had sought for and obtained a certificate of appeal from the high court, filed an appeal in the Supreme Court. But it evidently realised that one of the objections taken by the high court - that the SC and ST Commission should have been consulted

before making the categorisation - would be upheld by the apex court. It therefore simultaneously sought the opinion of the commission. The Commission refused to give its opinion when the matter was *sub judice* - before the Supreme Court. The government therefore withdrew the appeal in the Supreme Court on February 11, 1998 and pursued the matter with the Commission. The Commission asked for more data, and it took the government some time to collect it.

Meanwhile the MRPS undertook further agitation to put pressure on the government to "somehow or the other get the categorisation approved." Chandrababu Naidu was called a liar and a cheat. He was said to have sold out the interests of the Madigas after having taken the support of the MRPS in the mid-term parliamentary elections of 1998. Krishna Madiga staged a hunger strike in June 1998, and for the first time openly encouraged Madiga youths to indulge in violence. A Madiga youth, Tellabandla Ravi, immolated himself at Tadipatri, in Anantapur district. Since the TDP has been in every non-Congress alliance at the centre since Naidu took over its reins, it was said by MRPS that the chief minister could have got central government approval for the categorisation had he been really sincere. While it is true that Naidu's original enthusiasm for the demand of the MRPS was opportunistic, it is probable that the MRPS leadership did not fully appreciate the tangle the state government had got caught in because of the high court judgment; nor did it seem to realise that once the issue got stalled on legal considerations, whether of a procedural or a substantive nature, any attempt to hurry it by political pressure or manipulation could only boomerang. But perhaps any such considerations would have been regarded as unworthy of militant fighters, for competitive militancy is a compulsion that people's movements suffer from.

The end result of these events of June 1998 was that Madiga youths across the state got arrested on charges of violence and the movement lost some public sympathy for its perceived unwillingness to comprehend the legal odds the state government was wrestling with. When the government, under pressure from Krishna Madiga's fast, declared that it would do its best to expedite the process at the SC and ST Commission, the chairperson of the commission declared in a huff that he could not be pressurized. The state government even took the

avoidable step of moving the High Court for a direction to the SC and ST Commission to expedite its report.

Whether or not the Commission had delayed matters needlessly, the pressure tactics of the MRPS has given the Mala Mahanadu, at the next round of litigation which is now on, grounds for alleging lack of effective consultation with the SC and ST Commission on account of pressure. The only positive outcome perhaps of the MRPS pressure was that the state government sent the data called for by the Commission sooner than it might otherwise have done.

These events also saw the internal crisis of the MRPS coming to a head. For some time by then Krishna Madiga was being perceived by his colleagues as a vain, autocratic and dictatorial person who never sought their views on anything. Nor, it was said, did he respect the decisions of the executive body of the organisation. More disreputable allegations were made of unnamed deals entered into by Krishna Madiga with Naidu in return for MRPS support during the parliament polls of 1998. Very soon thereafter the Madiga movement split, one faction going with Krishna Madiga, another with Krupakar Madiga and many becoming inactive out of disgust.

More trouble was in store for the movement. The SC and ST Commission invited opinions on the matter, and after giving a hearing to all parties advised the state government against the categorisation. It is true that Article 338(7) allows a state government to reject a recommendation of the SC and ST Commission provided the reasons for the same are explained to the legislative assembly. But there is no gainsaying that one more ground is now available with the Mala Mahanadu for questioning the bona fides of the government in a court of law. Whether or not such a challenge can succeed in stalling the measure, it can certainly succeed in delaying matters further.

To minimise the likely damage the state government this time round chose the legislative route: it drafted - and sent for the governor's assent - an ordinance instead of an executive order as in the first round: legislative satisfaction is not on the same footing as executive satisfaction in the matter of judicial review. If the governor had signed it, the matter would no doubt have again gone to court, for only one of the grounds on which the previous GO was struck down had been taken care of by the consultation made with the SC and ST

Commission. The state government really had no option but to clear this one reasonable hurdle and then go through the High Court-Supreme Court rigmarole to meet the other hurdle contrived by the full bench judgment.

But governor C Rangarajan decided to put one more spoke in the wheel. He referred the ordinance to the president for his assent. There is nothing in the law or the Constitution that says he should have done so, for the opinion expressed by the High Court on the previous occasion is not law, however, weighty it may be as a judicial opinion. But the banker in the former governor of the Reserve Bank of India probably dictated that caution is the better part of constitutional valour.

Gloom descended on the already dispirited Madiga movement. The Madigas were afraid that the act of the governor spelt the end of the matter, for there was no way they could put pressure on the union government as they had done very effectively on the state government. It was also felt that presidential assent being in effect the assent of the central government would not be easily forthcoming. It was believed that the fear of likely repercussions on scheduled caste reservations all over the country would inhibit an early decision, especially in view of the unstable and perpetually crisis-ridden character of the governments in Delhi.

The MRPS splinters went into hibernation. Krishna Madiga turned to what one may call mainstream dalit politics: strike up alliances with putative political representatives of various BC communities and form electoral fronts on the assumption that votes proportionate to the population of the said BC community would drop into the front's lap. The novelty he invented was to invite Vaishyas into the front (he even considered Brahmins for a while) on the theory that the Reddys and Kammas had rendered everybody else politically backward. That absurd novelty apart, dalit leaders apparently never tire of this political make-believe, and most of them are content to live off it for ever. So too would Krishna Madiga have been perhaps, but after about a year's gap the president sprang a surprise by giving assent to the proposal of the state government. As the earlier ordinance drafted in September 1998 had in the meanwhile lapsed any way, the state government has made haste to redraft it and promulgate it on December 9, 1999.

But if parliament alone has the power to legislate categorisation of SC

reservations, as held by the AP High Court in the earlier judgment, presidential assent cannot cure the state's lack of legislative power, and the Mala Mahanadu's ground for challenging the ordinance survives, however tenuous the logic. The Mahanadu has gone to court, and the matter is once again before the High Court. Whatever be the outcome, it will certainly go to the Supreme Court. The whole process may take any amount of time. Given the prevalent state of judicial understanding of the matter, the Madigas will in all probability succeed in the end, but theirs may well be an empty victory by the time it comes. For reservations are available only in government (or government-financed) educational institutions and government jobs. This field is being shrunk as a matter of policy. And to the extent that these opportunities do survive after the few years more that the litigation is bound to take, by that time the state government would probably have fully entrenched the currently touted system of not making regular recruitments but giving jobs on contract. And while the courts till now have taken a more or less firm stand against regularization of persons employed on ad hoc or contractual basis without following the reservation roster among other requirements of eligibility, what the fate of the rule of reservation will be when all employment is contractual, without guarantee of tenure and possibility of regularization is a big question mark.

5. Ideology and Adjudication
The Supreme Court and OBC Reservations

Adjudication of public issues is an ideological act. Courts say they do their job within the four corners of the law, but the four corners are only corners. The space enclosed may be quite wide, and can permit divergent tendencies, all of them passing for interpretations of the law or the Constitution. It is idle to pretend that this divergence is the result of a pure difference of a juridical character. There is considerable politics in these divergent tendencies, when social issues of significance are involved.

The vicissitudes of the law of reservations after the supposedly authoritative pronouncement in the Mandal Commission case (lawyers know it as *Indira Sawhney vs Union of India*) in 1992 make-up is a classic instance. That judgment of nine judges, six of them concurring in upholding the provision of reservations to the Other Backward Classes (OBCs) to the extent of 27% in central government services, took a

realistic view of caste as an institution of Indian society, its discriminatory character, the need to overcome it, and the role special provisions such as reservations can play in that task.

The Court formulated and answered all the legal issues that have arisen over the years in connection with reservations under the Constitution. The judgment is one of common sense, and succeeds in summing up and trimming the rough edges of the positive content of judicial views in the matter over the previous 40 years, while going along with some of the retrogressive attitudes.

Though in retrospect it is evident that the judgment did open up space for mischief by insisting on identifying some thing called "a creamy layer" in every OBC community, and by expanding the space for judicial meddling by mandating a fact-finding enquiry of a public character by a statutory body into putative backwardness, it was on the whole as good a judicial pronouncement as one could expect within the tradition that views reservations as an instrument for equalising educational and employment opportunities at the threshold, while being mindful of the supposed injury that it causes to efficiency of the administration.

Reservations can be seen differently, as one instrument for equalising the status and position of castes considered as the basic communities of Hindu society, but courts have never seen it that way. Since judicial discipline demands that only a larger bench of judges can undo the result of any judgment, and since no bench larger than nine in size has gone into the question of reservations or any aspect of it after the Mandal Commission case, you would think that things are at least where the Mandal Commission case left them. You would be terribly mistaken, however. *A sad fact about the Indian judiciary is that where the judges have felt an urgent ideological compulsion they have not let mere canons of discipline stop them.* Judgments by much smaller benches than nine have prised open what the nine-judge bench declared to be the law to such an extent - while paying lip service to their duty of obedience to it - that most of the issues are again open for rewriting.

Ashoka Kumar Thakur vs Union of India, a judgment that is now at the centre of controversy because its effect has been that seats in central educational institutions supposedly increased to meet the newly created reservation of 27% for OBCs have turned into a bonanza of extra seats for the upper castes, is a case in point. First, the reference to a bench of five judges was unnecessary.

Judicial Indiscipline

The order of reference by the two-judge bench of Arijit Pasayat and Lokeshwar Singh Panta is a textbook case of judicial indiscipline. A whole list of questions (31, if you want the number) were raised, almost all of which were answered in the Mandal Commission case and indeed even much before that, and asked to be answered by a Constitution Bench. The only question that may have justified such reference (that too only because of unthinking judicial pronouncements in the recent past) was whether Parliament can by law direct private educational institutions to give reservations to the OBCs, which question was finally not answered (except by one of the five judges) on the ground that there was no challenge from private educational institutions When the majority of the five-judge bench came to that conclusion, they should have returned the reference instead of answering it, because there was never any doubt that the government can provide for reservations under the Constitution to OBCs in educational institutions owned or financially aided by it. Instead, the blanket order of reference was used by three of the five judges (Arijit Pasayat himself, CK Thakker and Dalveer Bhandari) to read the Mandal Commission judgment tendentiously, genuflecting with due respect, but glossing it in a manner that leaves the door open for a reversal in good time. It is easy to see in it conduct most objectionable in juridical terms, but what is more significant is the ideological underpinning of the indiscipline and its effect.

The significance of the "creamy layer" is an instance of what they have achieved. In the Mandal Commission judgment, the Court performed the strange feat of deducing a fact from an abstract principle, and declared that there exists a creamy layer in each OBC community, and it must be removed from the benefit of reservation given to that community so that the really backward among the backward may not be deprived of the benefits of special provisions. The reasoning proceeds thus: unequals must not be treated as equals; hence the well-endowed among an OBC community cannot be counted with the less-endowed ones; hence they must be disentitled to the reservation provision made for that community in the interests of justice; hence it is necessary to identify the creamy layer in each community and declare it ineligible for the reservation given to that community. The question, whether there, in fact, exists a creamy layer as a sub-class within OBC

communities, if so in which of them, and what is its effect on the availment of reservations by members of the community, whether, for instance, it has given confidence to the others to aspire for higher positions in life rather than come in the way of their advancement, were matters of no relevance to this process of deductive reasoning.

Nevertheless by the time of the Mandal Commission case, caste as a social category had come to be accepted by the courts as a class of a kind, eligible for reservations if it is backward. *Ashoka Kumar Thakur vs Union of India* (the judgment was pronounced on 10 April 2008), through the said three judges, introduces a revision: caste becomes a class only after the creamy layer is removed. Thus, the removal of creamy layer is no longer a matter of purported justice within the community as between the more backward and the less backward amongst it, as it was in the Mandal Commission case, but a necessary prerequisite for the caste to at all be a class, and a fortiori a backward class. This is a very significant conceptual revision, effected silently by a majority of this five-judge bench in a reference that was unnecessary in the first place.

Another instance is the way the same three judges have smuggled in the "economic criterion" for identifying backward classes. They were not called upon to decide whether caste can be the basis for determining backwardness because after a lot of dilly-dallying, the courts, which began with the view that caste can be only one of the criteria taken into account to identify backwardness, have come round to the view that if a caste is on the whole backward, it can be identified as a backward class, though there can be other ways of identifying backward classes too. This opinion has been approved in the Mandal Commission case. But the three judges proceed gamely to pose and answer the same question not withstanding its finality (at least until more than nine judges sit and reconsider it) and give different answers, while declaring themselves bound by the Mandal Commission judgment. They express pain at the fact that poverty deprives people of opportunity to pursue studies and come up in life. *It is in general remarkable that about the only time courts in our country have recognised the division of the country into poor and rich and deplored it, is when people have asked for caste-based reservations or rights. They are otherwise normally indifferent to economic cleavages in society. And they will not even learn from documented*

experience. As far back as the 1960s, the government of the then State of Mysore, the "native" part of which had had a systematic programme of encouragement of the non-Brahmin communities in education and employment in the pre-Constitution era, strangely found itself stumbling upon the Constitution (as understood by the Supreme Court) in its effort to continue/extend the measures after India dedicated itself to social justice in the post-Constitution era. It therefore introduced poverty-and-occupation-based reservations pending the success of its efforts to continue its programme, while satisfying the finicky stipulations of the Court. Reviewing this attempt, the Backward Classes Commission headed by O Chinnappa Reddy, which was later appointed by the successor state of Karnataka, found that it was the Brahmins, the Lingayats and the Vokkaligas that took most of the benefits. That this would happen would be obvious to anyone who knows anything about Indian society, but judges remain determined admirers of the economic criterion. In *Ashoka Kumar Thakur vs Union of India*, Arijit Pasayat and CK Thakker have given the astonishing direction that "to strike the constitutional balance, it is necessary and desirable to earmark certain percentage of seats out of permissible limit of 27% for socially and economically backward classes." And Dalveer Bhandari directs that after 10 years the criterion for reservation must shift to the economically backward. Wanting in discipline or not, the effect is that a majority of three out of the five judges in the bench are found pushing for the economic criterion in determining backwardness, which will find its utility with the kind of smooth lawyer that populates the Supreme Court in the days to come.

Second, and this brings us to the present controversy, the judgment answers questions that nobody asked, which courts are not supposed to do but find themselves doing when they find governments doing what they do not like, not as judges but as political creatures. They were only supposed to be adjudging the constitutional validity of the 93rd Amendment which has introduced Article 15(5) in the Constitution enabling the government to make a special provision by law for the advancement of backward classes insofar as it relates to admissions to educational institutions including private institutions, and the validity of the consequential law made by the Parliament, namely, the Central Educational Institutions (Reservations in Admissions) Act, 2006. In

parenthesis, it will be recalled that when the reservations were mooted, the upper castes which have a monopoly of higher education in the better type of institutions, kicked up a big fuss and blackmailed the government into compulsorily increasing the number of seats in every such institution so that the opportunities available to them remain untouched. In other words, they would not share the opportunities that they regard as theirs with the OBCs and the government had better not force them to do so in its quest for real equality of opportunity. That they succeeded in this blackmail, but still went ahead and challenged the law is an index of the kind of elite this country has. Now, this increase of seats and consequent infrastructure is estimated to cost about Rs 17,000 crore. The blame for the expenditure must squarely be placed on the blackmailing tactics of the upper castes and the union government's weakness in succumbing to it. But the upper castes generated an argument in their favour out of this expenditure: should Rs 17,000 crore be spent on implementing reservations in higher education when primary schooling is in very bad shape for want of funds? At least one of the judges, Dalveer Bhandari, found this crass hypocrisy impressive as an argument against the law.

Relaxing Criteria

What the Court was not called upon to answer is whether and to what extent the government or the educational institutions may relax the qualifying marks to enable the OBC students to access the reservations, and what is to be done if they fail to access the seats in sufficient number. It has been the general experience that the first time that reservations are given to any social class, not many are able to access it and a sufficient relaxation of the criterion of selection is needed to make the reservation a reality. It is also a matter of experience that the relaxation will not be needed after a certain time. What is to be done in this regard is a matter of government policy, and while the courts may be called upon to adjudicate the validity of a policy once it is formulated, it is not for them to say what it should be. But three judges thought otherwise. Arijit Pasayat and CK Thakker begin by properly asking the central government to "examine the desirability of fixing cut-off marks in respect of candidates belonging to OBCs" but add the uninvited illustration that "five grace marks may be added to OBC students." And then go on to positively mandate that if any seats in the OBC quota remain vacant, they shall be

filled up by "candidates from the general categories." Dalveer Bhandari is more forthright. He orders that the qualifying cut-off marks may be reduced by not more than 10 (out of 100) for the OBCs, but again if the qualifying OBC students fail to avail the 27% reservation, "the remaining seats would revert to the general category." These orders that overstep the powers of the Court have now come home to roost, and in the process proved the vacuity of the loud lament about the creamy layer that is the most jarring note in the judgment: this academic year the 27% OBC quota has remained largely unfilled in most of the central educational institutions.

To begin with, the union government took the initiative in leaving the policy to the institutions. The Ministry for Human Resources Development issued an office memorandum (OM) dated 20 April 2008 authorising the central educational institutions to "fix cut-off marks for admission/ selection through admission test, etc, for the OBC candidates with such differential from the cut-off marks for the unreserved category as each institution may deem appropriate for maintaining the standards of education and at the same time ensuring that sufficient number of eligible OBC candidates are available." Maybe the decision to leave it to the institutions was not very wise for educational institutions of the elite variety are the most steeped in Brahminical attitudes in our country. But good or bad, the OM still left it open for means to be devised so that sufficient number of OBC students do enter the institutions. But the Supreme Court again came in the way without so much as acknowledging let alone adjudicating the policy decision taken by the union government. Someone moved the Supreme Court for a "clarification" in the matter and the Court, after hearing the government too, which must have informed it of the OM dated 20 April 2008, passed an order on 14 October, approving the policy pronouncement of Dalveer Bhandari, namely, relaxation of not more than 10 in the qualifying cut-off marks and filling of unfilled seats by the general category, "having regard to the observations made in the judgments pronounced by this Court." What observations? Only Dalveer Bhandari made such an observation. Arijit Pasayat and CK Thakker said something else. Chief Justice KG Balakrishnan whose contribution to the Ashoka Kumar Thakur case is scrupulous in following the sympathetic spirit of the Mandal Commission judgment,

rightly avoided making any policy pronouncement. The last judge, RV Raveendran, who expressed an impossible agreement with all the other four, wrote a brief judgment which too avoids the issue.

Yet, the same five judges sitting again endorse what is a policy made by judicial fiat by one of them, implicitly overruling the government's policy decision without even referring to it. The result is that the upper castes who earlier had much of the 100% to themselves now have more than 100%. The urge the courts - which remain a bastion of the upper castes - feel in the matter of preempting what they believe to be undesirable policy decisions in connection with reservations is nowhere more evident.

It is not possible to conclude this without commenting on the extraordinary interpretation put by the Jawaharlal Nehru University (JNU) on the order of 14 October 2008 passed by the Supreme Court. It should be obvious to even a child that what the Court said was that if a student in general has to get, say, 40 marks in the qualifying test or interview or whichever combination of two the institution prescribes, to be eligible for selection to a course, then in the case of OBCs it will be sufficient if the candidate gets 30 marks. It takes exceptional intelligence to read it as anything else. But they evidently possess that in that university. A committee of five teachers concluded that what the Supreme Court meant when it spoke of relaxation of not more than 10 in the cut-off marks was that the marks obtained by an OBC candidate must be within 10 marks of the least marks obtained by those who have qualified in the general category for the OBC candidate to be eligible for selection! Social scientists for some time now have been speaking much of the legitimacy of diverse "readings" of "texts" but one does hope that in the JNU they have not carried it to misreading of plain English.

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